IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 544 of 2004.

Date of decision: 10.01.2006.

Dayal Singh ... Appellant

Versus

Smt. Rukmi Devi & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?[1] Yes.

For the appellant : Mr. K.D. Sood, Advocate.

For the respondents: Ms. Devyani Sharma, Advocate, for respondents No. 2 to 6.

Smt. Shubh Mahajan, Advocate, for respondent No. 16.

None for respondents No. 14 & 15.

V.M. Jain, J. (Oral):

This Regular Second Appeal has been filed by Dayal Singh, plaintiff – appellant, against the judgments and decrees of the Courts below, whereby the suit filed by the plaintiffs was dismissed by the trial Court and the appeal filed by Dayal Singh, plaintiff, was also dismissed by the learned District Judge.

The facts which are relevant for the decision of the present appeal are that Harnam Singh and Dayal Singh, plaintiffs had filed a suit for declaration and injunction against the defendants, with the allegations

[1]Whether reporters of Local Papers may be allowed to see the judgment?

that the plaintiffs were the joint owners in possession along with the defendants in respect of the suit land. It was alleged that in the year 1981, a suit was filed titled as Amar Singh and others Vs. Anokhi Ram and others and the same was decided by Rajgarh Court on 29.3.1988 on the basis of a compromise. It was alleged that the said compromise was null and void and not binding on the plaintiffs, on the ground that the said compromise was based on the statement of the counsel only; the counsel was never given any authority to enter into such compromise; the property was divided between Amar Singh, Anokhi Ram and Narata Ram, but they had no right to divide the property amongst themselves and that the compromise was the result of fraud, misrepresentation and collusion committed by Amar Singh, Anokhi Ram and Narata Ram. It was alleged that the said decree passed on such compromise was not binding on the plaintiffs and the mutation attested on the basis of the said decree was also of no consequence. It was alleged that the plaintiffs came to know about the said compromise decree only a month prior to the filing of the present suit (which was filed on 17.6.1994). Accordingly, the plaintiffs sought a decree for declaration to the effect that the Civil Court decree dated 29.3.1988 was null and void and that the plaintiffs were owner in possession of the land measuring 5 Biswas and for injunction restraining the defendants from interfering in their possession over the suit land.

The suit was contested by some of the defendants by filing two separate written statements, taking up various preliminary objections. On merits, it was alleged that by way of the said compromise Amar Singh and Anokhi Ram etc. had become owners of the suit land, as detailed in the written statements. It was denied that the counsel had no authority

to enter into a compromise. On the other hand, it was pleaded that the present plaintiffs had abandoned their claim. It was further alleged that the mutations were attested on the basis of the said compromise. It was further alleged that the plaintiffs were not owners in possession of the land comprised in Khasra No.211/170/123. It was further alleged that the compromise in question was legal and valid and a seal had been put on the same, since the appeals filed by the present plaintiffs before the District Judge and the High Court had failed.

After hearing both sides and perusing the record, the learned trial Court dismissed the suit of the plaintiffs, holding that the compromise in question could not be declared as in-valid, merely for non preparation of a separate compromise deed. The appeal filed by Dayal Singh, one of the plaintiffs, was dismissed by the learned District Judge, upholding the findings of the learned trial Court, holding that the present suit was not maintainable in view of the provisions of Order 23 Rule 3-A C.P.C. Feeling aggrieved against the same, Dayal Singh, plaintiff, filed the present Regular Second Appeal in this Court.

Notice was ordered to be issued to the respondents and the records were also requisitioned.

I have heard the learned counsel for the parties and have gone through the record carefully.

The learned counsel appearing for the plaintiff – appellant submitted before me that the present suit filed by the plaintiffs was maintainable and the Courts below have erred in law in dismissing the suit of the plaintiffs. However, I find no force in this submission of the learned counsel for the plaintiff – appellant. Ext. PA is the copy of the order dated 29.3.1988 passed by Sub Judge Ist Class, Rajgarh, in Civil

Suit No. 76/1 of 1984/18.9.1981. The said suit was filed by Amar Singh etc. including present plaintiffs, namely Harnam Singh and Dayal Singh, against Anokhi Ram etc. As per the aforesaid order dated 29.3.1988, in the conciliation efforts, the matter was compromised as per separate statements of the parties and their counsel and in view of the compromise arrived at between the parties, a compromise decree was passed. Certified copy of the decree dated 29.3.1988 passed on the said compromise is also available on record as Ext.PH, besides the copies of various statements, which are Exts. PE, PF and PG. Copy of the plaint in the previous suit is Ext.PJ. After the passing of the aforesaid compromise decree dated 29.3.1988, present plaintiffs, namely Harnam Singh and Dayal Singh had filed an appeal before the District Judge against the aforesaid compromise decree dated 29.3.1988. Since the said appeal was barred by time, an application under Section 5 of the Limitation Act was filed, seeking condonation of delay in filing the appeal. The learned District Judge, vide order dated 21.8.1990 Exts. PR-1 and Ext. DA dismissed the application under Section 5 of the Limitation Act along with the appeal being barred by time. Aggrieved against the same, Harnam Singh, plaintiff filed RSA No. 14 of 1991 in this Court, titled as Harnam Singh Vs. Anokhi Ram and others. Vide order dated 16.12.1991 (copy Ext. DC), the said appeal was dismissed by this Court, holding that the learned District Judge had rightly dismissed the appeal as time barred. After the Regular Second Appeal was dismissed by this Court on 16.12.1991, after 2½ years thereof i.e. on 17.6.1994 Harnam Singh and Dayal Singh filed the present suit, which was dismissed by the trial Court and the appeal filed by Dayal Singh was dismissed by the learned District Judge.

Taking into consideration that previous suit between the parties was compromised and compromise decree dated 29.3.1988 was passed by the trial Court and the appeal was dismissed as time barred and the second appeal was also dismissed by this Court, in my opinion, no case was made out for the plaintiffs to have filed the present suit after 2½ years after the dismissal of the Regular Second Appeal by alleging that they came to know about the said compromise decree only a month prior to the filing of the suit. Be that as it may, the fact remains that after the earlier suit was compromised between the parties and a compromise decree was passed by the trial Court, the present suit filed by the plaintiffs was not maintainable in view of the mandatory provisions of Order 23 Rule 3-A C.P.C., read along with the Explanation given under Rule 3 of Order 23 C.P.C. The provisions of Order 23 Rule 3 (Explanation) and Rule 3-A C.P.C. came up for consideration before the Hon'ble Supreme Court in the case **Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another**, **AIR 1993 Supreme Court 1139**. After referring to the various provisions, it was held by the Hon'ble Supreme Court that by adding the proviso along with an explanation in Order 23 Rule 3 C.P.C., the purpose and the object of the amending Act appears to be to compel the party challenging the compromise to question the same before the Court which had recorded the compromise in question and the said Court was enjoined to decide the controversy whether the parties had arrived at an adjustment in a lawful manner. It was further held that the explanation made it clear that an agreement or a compromise which is void or voidable under the Indian Contract Act shall not be deemed to be lawful within the meaning of the said Rule. It was further held that having introduced the proviso along with the explanation in Rule 3, in

order to avoid multiplicity of suit and prolonged litigation, a specific bar was prescribed by Rule 3-A in respect of institution of a separate suit for setting aside a decree on the basis of a compromise. It was further held in the said authority that by amending the provisions of Order 43 Rule 1 C.P.C., no appeal was maintainable against an order recording or refusing to record an agreement or compromise under Order 23 Rule 3 C.P.C. and being conscious that right of appeal against the order recording a compromise or refusing to record a compromise was taken away, Rule 1 A in Order 43 C.P.C. had been added, permitting an aggrieved party to file an appeal contesting the compromise decree on the ground that the compromise should or should not have recorded.

In view of the provisions of Order 23 Rules 3 and 3-A C.P.C. and the law laid down by the Hon'ble Supreme Court in Banwari Lal's case (supra), in my opinion, both the Courts below were perfectly justified in holding that the present suit filed by the plaintiffs was not maintainable and no fault could be found with the same, especially when the earlier suit was decreed on the basis of a compromise and a compromise decree was passed. I am further of the opinion that there is no scope for interfering in the present Regular Second Appeal, especially when no question of law, much less a substantial question of law, arises for determination in this appeal.

For the reasons recorded above, finding no merit in this appeal, the same is hereby dismissed.

CMP No. 1076 of 2004:

In view of the dismissal of the main appeal, the stay order dated 7.12.2004 shall stand vacated and the application stands disposed of.

(V.M. Jain),
Judge

January 10, 2006
(BSS)